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TSMC 01-0337; 67,200-572  
Serial Number 09/998,343

**REMARKS**

Favorable reconsideration of this application in light of the above amendments and the following remarks is respectfully requested.

Claims 1-12 are pending within this application. No claims are amended herein. No claims have been allowed.

***Claim Rejections – 35 U.S.C. § 103***

The Examiner has rejected claims 1-12 under 35 U.S.C. § 103(a) as being unpatentable over Athavale et al. (U.S. Patent No. 6,539,386; hereinafter "Athavale") in view of Chacon (U.S. Patent No. 6,128,588).

Athavale (abstract, cover figure and paragraph bridging cols. 7-8) teaches a method and system for modifying a customer order. The system comprises a customer computer 22 connected to a network commerce server 26 with additional access to an order database server 28 that in turn controls a manufacturing and distribution facility 56. The method provides that a customer employs an ordering application 42 installed on the customer computer 22 to access a change order engine 44 installed on the network commerce server 26. Proposed changes are evaluated and approved by a customer prior to implementation within an order entry application 46 within the order database server 28.

Within the paragraph bridging pages 2-3 of the office action mailed 5 February 2004, the Examiner reads Athavale onto applicant's claims 1-2, 4-8 and 10-12. In so doing, the Examiner acknowledges that Athavale fails to disclose Athavale's invention within the context of a microelectronic fabrication facility or within the context of a chemical work in process

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(WIP) workload lot. The Examiner also acknowledges that Athavale fails to disclose the various microelectronic fabrication facilities claimed within applicant's claims 3 and 9.

Within the paragraph bridging pages 3-4 of the office action made FINAL, the Examiner nonetheless relies upon Chacon as disclosing a microelectronic fabrication facility such as a semiconductor fabrication facility. The Examiner asserts that chemical processing occurs within the microelectronic fabrication facility. The Examiner rationalizes suggestion or motivation for modification or combination of Athavale with Chacon such as to "provide an improved fabrication facility wherein customers have access to their orders and thereby change their orders during manufacturing as taught by Athavale."

In response, applicant first acknowledges that Athavale does in fact teach a fabrication facility where customers have access to their orders and change their orders during manufacturing. Applicant also notes that Chacon teaches a microelectronic fabrication facility where chemical processing occurs. However, applicant also notes that: (1) an Examiner must consider the prior art in its entirety, including disclosures that teach away from an applicant's claims (MPEP 2141.02); and (2) in their entirety the teachings of Athavale and Chacon are in sufficient conflict such that the Examiner's rationalization for suggestion or motivation for modification or combination of Athavale with Chacon, while applicable to Athavale, does not appear reconcilable with Chacon (MPEP 2143.01).

More specifically, applicant again notes that Athavale (title, abstract and cover figure) teaches a manufacturing system and method that allows a customer to modify a customer order within a manufacturing facility. In effect, such a system and method allow a customer to experiment with the actual production control scheduling of the customer's order within the

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manufacturing facility. In contrast, Chacon (title, abstract and cover figure) teaches a microelectronic fabrication production control scheduling and characterization system that is intended to provide "a practical alternative to expensive experimentation on actual production." Since: (1) Athavale teaches a system and method that provides for experimentation with ongoing production within a manufacturing facility; while (2) Chacon teaches a system and method specifically intended to avoid experimentation with ongoing production within a manufacturing facility, applicant asserts that Chacon is materially in conflict with Athavale and applicant's claimed invention. In accord with MPEP 2141.02, the Examiner must consider this conflict. Given this conflict, and in accord with MPEP 2143.01, the Examiner's rationalization for suggestion or motivation for modification or combination of Athavale with Chacon, while applicable to Athavale, appears irreconcilable with Chacon.

"A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." MPEP 2141.02 (citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.* (emphasis in original and citation omitted)). "Where the teachings of two or more prior art references conflict, the examiner must weight the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another." MPEP 2143.01 (citing *In re Young*, (citation omitted))

Thus, since: (1) the Examiner acknowledges that each and every limitation within applicant's invention as disclosed and claimed within amended claims 1-12 is not taught within Athavale; and (2) Chacon may not properly be combined with Athavale for reasons as cited by the Examiner since the teachings of Athavale and Chacon conflict such that the reasoning employed by the Examiner for modification or combination thereof applies to Athavale but is not

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apparently reconcilable with Chacon, applicant asserts that none of applicant's claims to applicant's invention may properly be rejected under 35 U.S.C. § 103(a) as being unpatentable over Athavale in view of Chacon.

In light of the foregoing response, applicant respectfully requests that the Examiner's rejections of claims 1-12 under 35 U.S.C. § 103(a) as being unpatentable over Athavale in view of Chacon be withdrawn.

### *Other Considerations*

The Examiner has newly cited no additional prior art of record not employed in rejecting applicant's claims to applicant's invention. No fee is due as a result of this amendment and response.

### SUMMARY

Applicant's invention as disclosed and claimed within amended claims 1-2 and amended claim 7-8 is directed towards a method and a system for managing a work in process workload. The method and the system allow for customer access to change production parameters of the work in process workload. The work in process workload is a microelectronic fabrication work in process workload or a chemical work in process workload. The prior art may not properly be combined to provide applicant's claimed invention.

### CONCLUSION

On the basis of the above amendments and remarks, reconsideration of this application, and its early allowance, are respectfully requested.

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Any inquiries relating to this or earlier communications pertaining to this application may be directed to the undersigned attorney at 248-540-4040.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Randy W. Tung', written over a circular stamp or mark.

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